

On Tuesday, May 9th, Mr. Werlinger notified VOVN that unless it paid its airtime bill through May 19th, he would refuse to allow the programmer to air its program that day. He was assured repeatedly by a VOVN representative that payment would be made prior to 2:00 pm; however, when 2:00 pm arrived and payment from the Vietnamese programmer did not, Werlinger instructed Salem by telephone not to air the VOVN program. Salem didn't begin the VOVN program at 2:00 but it did take control of programming, effectively pulling the plug on KENR Management. At 3:10 the same afternoon, Mr. Werlinger was in the lobby of Salem's offices demanding to know why Salem was violating terms of an agreement reached in state district court just 24 hours earlier. At 3:00 pm, Mr. Clark entered the lobby and handed Mr. Werlinger a letter indicating that Salem considered KENR Management Company in violation of its contract for supposedly violating FCC rules on station identification and was therefore, immediately terminating the LMA contract. This action of course, violated several articles in the agreement and violated the court order.

Mr. Werlinger and his staff had spent the previous afternoon and evening contacting more than forty programmers on the station and informing them they had two weeks to promote the change of frequency on both radio stations. However, less than 24 hours later, those same programmers had to be contacted again and told there would be no two week transition. Each programmer was offered deep discounts on their programming rates in an attempt to compensate them for their losses due to the premature move. To their credit, all but one of the programmers agreed to stay and make the immediate transition to the new frequency.

The staff which had placed the 1270 kHz facility on the air now turned its attention to completing necessary field data on the new transmitter site.

On May 12th, Mr. Werlinger received a call from John Vu of the FCC's AM Branch. Mr. Vu indicated his office had received several complaints concerning interference between KFCC's new site and that of KWHI in Brenham, Texas. Mr. Vu indicated he would be taking a second look at the STA and would probably be sending a letter ordering the station to reduce its power from 1000 watts to 300 watts (a letter to that effect was sent via fax later in the day). When asked who had filed the complaint, Mr. Vu indicated the complaints had been via telephone calls only and he had received nothing in writing.

Expecting the complaints had come from KWHI's licensee, Mr. Werlinger decided to contact Tom Whitehead, the owner of KWHI regarding any concerns he might have with the move. Mr. Whitehead indicated in a phone conversation with Fred Lundgren of KFCC's staff he had no knowledge of KFCC's move, and had received no complaints from listeners, and had filed no complaint with the FCC. This of course, led to the inevitable conclusion that the complaints had come from Salem, although at this point there was no proof.

During the next several days, the KFCC staff worked diligently to solidify the move to 1270 kHz and to ease any problems programmers were having with the change. Then on Monday, May 22nd, at 3:45 pm, KFCC received another fax from John Vu. This fax stated that further study showed that with only 300 watts, KFCC did not cover its city of license (Bay City) with the required 5.0 mV/m city grade contour and ordered Chameleon to cease operations from its new site. Needless to say, this correspondence came as a complete shock. After very quick deliberations, it was decided that Mr. Werlinger should travel to Washington and personally argue the case against turning off the STA site. It was also decided to leave the site on the air while Mr. Werlinger was in Washington.

Mr. Werlinger arrived in Washington the following day and was at the offices of the FCC on M Street by 3:00 pm. He met with Commission staffers John Vu, Kim Sung, and AM Branch Chief James Burtle. Mr. Burtle told Mr. Werlinger that his staff had erred when it allowed Chameleon to move KFCC. He stated that "the phones have been ringing off the wall" with complaints and categorical statements, "this situation could cost me my job."

Mr. Werlinger replied that he had received no copies of any complaints having been filed on the matter and that he had been in contact with the only other radio station (KWHI) which might be effected by the KFCC site change and at that time, the licensee of that station had no complaint with the move.

Mr. Burtle ignored this response. He was adamant, stating that KFCC must cease operations at its new site immediately and find another site near Bay City. Mr. Werlinger again asked about the source of the complaints. Mr. Burtle stated they had come by telephone adding, "but, that doesn't matter. You've got to get your butt back to Bay City. That's all that matters." Mr. Burtle also added, "The thing has already hit the press. I know how much water is behind the dam. You're trying to move a new station into Houston and if I let you do it, everyone will be wanting to do it."

It was clear to Mr. Werlinger that Mr. Burtle felt his staff had made an error in moving the station. He feared numerous applications by other broadcasters to make similar moves into other large markets if the STA were allowed to stand. Mr. Werlinger attempted to explain that Houston's largest group of international language programmers would be put off the air if the STA were canceled. He reminded Mr. Burtle that many of the STA operations currently on the air in the AM band do not place the required 5 mV/m city grade contour over their respective cities of license. None of that mattered to Mr. Burtle. The meeting ended with Mr. Burtle directing Mr. Werlinger to return to Houston, and to immediately find a location near Bay City from which to broadcast.

Mr. Werlinger left Mr. Burtle's office and went to the office of Larry Eeds, chief of the Audio Services Division at the FCC and Mr. Burtle's immediate supervisor. Mr. Eeds was out for the remainder of the day so Mr. Werlinger indicated he would return the following morning. On Wednesday, Mr. Werlinger attempted to see Mr. Eeds on three different occasions and was eventually told to return at 11:00 am on Thursday for a meeting.

On Thursday May 25th, Mr. Werlinger met Mr. Eeds. During a 45 minute conversation, Mr. Werlinger relayed the contents of this Narrative. Mr. Eeds responded by offering an immediate stay to the order which had previously rescinded the STA.

Upon returning to Houston, Mr. Werlinger found in his mail a copy of a complaint filed against Chameleon by Salem Broadcasting with the Federal Communications Commission. It became very clear that Salem was telephoning anonymous complaints to the Commission regarding KFCC's new site.

Salem Broadcasting does not operate any facility which might receive interference from KFCC, nor does it have a facility licensed to Bay City, nor do any of the principals of Salem live in Bay City (or the entire State of Texas for that matter). Salem's actions at the FCC are purely an attempt to restrain Chameleon from doing business. At the FCC, such activities are referred to as "strike" actions.

CONCLUSION

In the space of a year, the principals of KENR Management Company, Inc. (the same as those in Chameleon Radio Corp.) placed all their assets in a binding, five year contract with Susquehanna Radio Corp. This contract was lost through the sale of the station to Salem Broadcasting. After the loss, KENR Management decided to find its own radio station.

KENR - Chameleon overcame every obstacle and even managed to place a new facility on the air in the matter of just a few hours in the face of losing a second LMA. In short, in spite of losing two binding time brokerage contracts within a year, Chameleon has survived and thrived. It has only sought the opportunity to go on its unimpeded way. Salem Broadcasting has made every attempt to eliminate that opportunity and has used the Federal government (The FCC) to interfere with Chameleon's business. This is an abuse of the regulatory process.

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FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

SEP 8 1995

In Reply Refer To:
1800B3-KDY

VIA TELECOPIER AND CERTIFIED MAIL-RETURN RECEIPT REQUESTED

Mr. Don Werlinger,
President
Chameleon Radio Corporation
10865 Rockley Road
Houston, Texas 77099

In re: KFCC(AM) Bay City, Texas
(formerly KIOX(AM))
Notice of Special Temporary
Authority Cancellation

Dear Mr. Werlinger:

We have on file Chameleon Radio Corporation's ("Chameleon")¹ August 4, 1995 request for extension of Special Temporary Authority ("STA") to operate KFCC(AM), Bay City, Texas,² at variance from its licensed parameters.³ As set forth below, we deny Chameleon's request for extension.

Background. On April 18, 1995, the Commission approved an application assigning

¹ Don Werlinger ("Werlinger") is listed in the Commission's records as President of Chameleon.

² Station KFCC(AM) is licensed to serve Bay City, Texas, on 1270 kHz with a transmitter power of 1000 watts (DA-N), from a site 5.8 km northeast of Bay City, Texas ("Bay City Site"). The Commission's records indicate that KFCC(AM)'s main studio is located at the Bay City Site.

³ Two Houston-area licensees, South Texas Broadcasting, Inc. ("South Texas") and Tom S. Whitehead ("Whitehead") have filed objections to the STA, alleging, among other things, that the facilities specified in the subject STA cause interference to their respective stations. Both objections remain pending. By letter dated September 1, 1995, South Texas requested withdrawal of its objection.

EXHIBIT

6

Federal Communications Commission

ocket No. 96-173 Exhibit No. 14

resented by MMB

Disposition { Identified X
Received X
Rejected _____

Reporter JS

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KFCC(AM) from Landrum Enterprises ("Landrum") to Chameleon (BAL-950216EA). On April 21, 1995, Chameleon, filed the subject request for STA. Chameleon claimed a need to relocate the station's transmitter "[d]ue to the loss of its currently licensed site." Chameleon proposed to operate from "rural southwest Harris County" ("Harris County Site") at coordinates N29-38-10, W95-32-22 and requested authority to operate nondirectionally at 1000 watts day, 250 watts night. Chameleon further proposed "to utilize a [180'] tower supporting a folded unipole antenna system." Chameleon also stated that, on April 20, 1995, it sought "FAA authority to construct." Claiming that the STA operation will produce no prohibited overlap - "with the exception of KWHI(AM), Brenham, Texas" - Chameleon stated that it intended to file an FCC Form 301 application to seek permanent authority for operations from the Harris County Site. Pursuant to an oral conversation with the Commission staff, Mr. Werlinger was informed that this STA could not be granted because it appeared to involve construction of a new tower.

In response, on May 2, 1995, Chameleon amended its STA request. Chameleon submitted an amended Figure E-1 correcting the coordinates of the above-noted "existing 180' tower" to N29-38-14, W95-32-24. Chameleon stated that "[t]he tower in our original proposal will be the center tower of what will be a three tower array." Chameleon also stated that it intended to file an FCC Form 301 "within 30 days of placing the STA on the air."

On May 5, 1995, the Commission staff granted Chameleon STA to operate with the parameters described in the initial STA request. That letter indicated that the staff believed the STA site to be only 0.25 km from the licensed site.⁴ After further study, though, on May 12, 1995, the Commission staff superseded its May 5 letter to instead specify the amended STA tower coordinates and to reduce KFCC(AM)'s operating power to 300 watts daytime and 50 watts nighttime because of potential interference that was called to the staff's attention. Subsequently, on May 18, 1995, the Commission staff issued a letter to Chameleon rescinding the STA ("Rescission Letter"). The Commission staff stated that further study had revealed that KFCC(AM) could not cover its community of license, Bay City, Texas, from the Harris County Site in apparent contravention of 47 C.F.R. 73.24(i). The Recision Letter, however, was stayed on May 25, 1995 by action of the Chief, Audio Services Division, Mass Media Bureau, pending further clarification of the record.

By letter dated July 25, 1995, the Chief, Audio Services Division requested Chameleon to respond to several questions regarding the circumstances giving rise to Chameleon's necessity for STA, facts concerning KFCC(AM)'s licensed facility and construction efforts taken pursuant to the STA. See July 25, 1995 Letter From Larry D. Eads, Chief, Audio Services Division to Mr. Don Werlinger ("Inquiry Letter"). The Inquiry Letter requested

⁴ The May 5th letter was incorrect. The actual site being requested by Chameleon was 80 km from its licensed site. Because Chameleon's amended Figure E-1 depicted an existing 180' foot tower as being "0.25 km from [KFCC(AM)'s] licensed site" the staff inadvertently assumed that the proposed STA site was actually only 0.25 km from the Bay City Site.

Werlinger to:

1. Provide specific details concerning: (a) the circumstances under which Chameleon "lost" the Bay City Site and the date that the "loss" occurred; (b) Chameleon's present legal right of access to the Bay City Site in view of the sublease given to Landrum; (c) the present status of the KFCC(AM) transmission facility at the Bay City Site, and if the status has been changed, the date of any such change and all details concerning the nature and extent of that change; and (d) the present address of the KFCC(AM) main studio.
2. Furnish a showing demonstrating that no better site - other than the Harris County Site - exists from which KFCC(AM) can maintain coverage as closely as possible to the licensed service, including principal community contour coverage of Bay City, Texas.
3. Provide: (a) the name, address and telephone number of the [Harris County Site] owner; (b) any lease or written agreement providing for Chameleon's access to the site; (c) whether Chameleon's principals, or its officers or directors, directly or indirectly, ordered construction of a tower on that site and if so, the date construction of the tower began; (d) the name, address and telephone number of the tower construction contractor; and (e) provide a copy of the FAA filing discussed in the April 21, 1995 STA request and a copy of the FAA Determination of No Hazard.
4. Provide the exact date of consummation of the assignment of KFCC(AM) from Landrum to Chameleon (BAL-950216EA).

After not having received a request for extension of the STA or a timely response to the Inquiry Letter, the Commission staff issued a letter on August 11, 1995 informing Chameleon that the STA had been terminated ("Rescission Letter 2").⁵ On August 11, 1995, Chameleon faxed a date-stamped copy of its extension request and response to the Inquiry Letter ("Response Letter"). Chameleon stated that a copy of this letter had been mailed to the Commission on August 4, 1995.⁶ By letter dated August 11, 1995, the Commission staff

⁵ See August 11, 1995 Letter from Larry D. Eads, Chief, Audio Services Division to Mr. Don Werlinger.

⁶ On August 25, 1995, Whitehead faxed a reply to the Response Letter to the Chief, Audio Services ("Reply"). In that letter, Whitehead challenges Chameleon's statements of fact contained in the Response Letter and renews his request for termination of the STA. We will consider the issues raised by the Reply and incorporate those allegations with his earlier-filed

stayed Rescission Letter 2 pending study of the material submitted in the Response Letter.⁷ Meanwhile, on August 4, 1995, Chameleon had filed an application on FCC Form 301 to change KFCC(AM)'s community of license from Bay City, Texas, to Missouri City, Texas, and to modify the station's facilities to operate from the Harris County Site.

With respect to the specific questions identified above, the Response Letter provides the following:

(1) Question 1: Chameleon provides no further information to support its claim in the STA request that it needed to relocate the KFCC(AM) transmitter "[d]ue to the loss of its currently licensed site." Chameleon also does not discuss its present legal right of access to the Bay City Site. Additionally, the Response Letter does not address the present status of KFCC(AM)'s licensed facility at the Bay City Site or any technical changes, if any, that may have taken place at that site. Furthermore, Chameleon does not identify the current location of the KFCC(AM) main studio. Chameleon's only responsive statements regarding the STA are: (1) that it was "making creative use of whatever rules presented themselves in order to save both its business and the outlet it had created for the international community in Houston" Response Letter at 17; and (2) that it "has gone to the outer limits in dealing with the Commission's Rules regarding Special Temporary Authorization. . . ." Response Letter at 19.

(2) Question 2: Chameleon provides no information indicating that it had considered any other site by which KFCC(AM) could maintain its presently licensed service to Bay City.

(3) Question 3: Chameleon states that the tower is owned by Mr. Joe McClish of Economy RF Construction Company, an Austin Texas Communication Company. Response Letter at 10. Chameleon indicates that Mr. McClish, in the course of an April 26, 1995 telephone conversation, expressed his interest in owning the tower and agreed to erect it before May 1, 1995. *Id.* Chameleon also states that none of its funds were expended for the tower's construction and that no "broadcast equipment was placed on the site until after the grant of the STA." *Id.* Chameleon reports that installation of broadcast equipment on the site began immediately upon grant of the STA and was completed by May 7, 1995. *Id.* Chameleon contends that this tower does not require FAA approval. *Id.* Chameleon does not, however, submit a copy of the FAA filing discussed in its April 21, 1995 STA request.

(4) Question 4: Chameleon states that the closing of the assignment from Landrum occurred on April 20, 1995.

Discussion. Based upon our careful review of the Response Letter, we conclude that

objection noted above.

⁷ See August 11, 1995 Letter from Larry D. Eads, Chief, Audio Services Division to Mr. Don Werlinger.

Chameleon's April 21, 1995 stated basis for the STA -- "loss of its currently licensed site" -- is not supported by the facts in the record. Our policy is to require that the site "loss" be beyond the applicant's control before granting STA.⁹ Based upon material submitted in the Response Letter, Chameleon appears to have voluntarily abandoned its licensed site, and its licensed Bay City, Texas, broadcast service, in order to fulfill identified contractual obligations. In the Response Letter, Chameleon discusses in great detail a Houston licensee's decision to terminate a programming agreement made between the licensee's predecessor and a Chameleon-affiliated programming supplier.⁹ Under this agreement, Chameleon had supplied programming produced by various international broadcasters to that licensee's Houston station. Upon receiving a notice of the agreement's termination from the licensee, Chameleon "moved with all haste toward finding an acceptable transmitter site in southwest Houston to which it could move." Response Letter at 9. The "need" for an acceptable Houston broadcast signal thus appears to have formed the basis for Chameleon's STA request rather than a "loss" of site that was beyond Chameleon's control.¹⁰ Chameleon's contractual obligations to programmers seeking a Houston broadcast service do not provide a basis for granting STA that deprives Bay City, Texas, of a licensed service that it has enjoyed for more than forty years.

We find that Chameleon's use of STA to introduce a new broadcast service to Houston, Texas is both a violation of our STA policies and the licensing procedures of the Communications Act of 1934, as amended (the "Act"). Section 309 of the Act provides that the Commission may not grant an application for facility modifications of the type represented by Chameleon's STA until the Commission staff has examined the subject application, provided a public notice of the acceptance of the application for filing and allowed a thirty-

⁹ Section 73.1635(a) of the Commission's Rules provides for the issuance of an "STA to a licensee to permit the operation of a broadcast facility for a limited period at a specific variance from the terms of the station authorization or requirements of the FCC rules applicable to the particular class of station." 47 C.F.R. §1635(a). Any STA request must "fully describe the proposed operation and the necessity for the requested STA." 47 C.F.R. § 73.1635(a)(2).

⁹ According to the Response Letter, Chameleon's principal was also the principal of the subject programming supplier.

¹⁰ Whitehead contends that Chameleon's abandonment of the Bay City Site may have been voluntary. In documents associated with the above-referenced assignment of license from Landrum, we note that Chameleon assigned the rights of some portion of the Bay City Site back to Landrum. The Response Letter fails to address our question regarding what legal rights Chameleon has with respect to the Bay City Site, in view of that assignment of lease rights. Chameleon has also not responded to our query regarding the condition of the licensed Bay City Site's transmission facilities. We note, however, that the Commission's records indicate that Landrum was operating KFCC(AM) from that site at the time of the assignment of license to Chameleon.

day period for comment on the application by relevant parties. 47 U.S.C. § 309. To the extent that Chameleon's admitted "creative use" of the STA is an attempt to foreshorten the statutory procedures mandated by the Act, we decline to permit circumvention of those requirements by use of STA.¹¹

We further note that it is not our policy to authorize new construction intended to be for permanent operations pursuant to STA. The Commission staff rejected Chameleon's April 21, 1995 STA request because it proposed constructing a new permanent tower. Chameleon's amended May 2, 1995 exhibit had removed the term "new" and instead indicated that the tower to be used was an "existing" structure. We note, however, that the Response Letter provides conflicting dates as to when the tower was actually erected on the Harris County Site.¹² The Response Letter does state, though, that its "agreement" with the tower contractor to erect a tower on the Harris County Site was confirmed in a telephone conversation on April 26, 1995. Response Letter at 10. Therefore, we conclude that the tower was constructed sometime between April 26 and May 8, the date that Chameleon reports it began operations from the Harris County Site. Response Letter at 12. Because it appears that this tower was erected for the primary purpose of providing service under the STA, and with the intention of it becoming a permanent structure for operations (see May 2, 1995 letter from Chameleon), we find that extending the STA under such conditions would clearly violate our established STA policy.

We wish to address two remaining matters regarding the Response Letter. First, Chameleon states that "after very careful consideration that Mr. Werlinger made the decision to disregard [the Recession Letter]." Response Letter at 15. We caution Chameleon, and note herein, that pursuant to Section 503(b) of the Act unauthorized operation of a broadcast station can subject a licensee to forfeiture. Second, we note that Chameleon failed to address several specific questions in the Inquiry Letter. We remind Chameleon that it is a violation of Commission Rules to make a "willful material omission bearing on any matter within the jurisdiction of the Commission." 47 C.F.R. § 1.17. In any event, for the purposes of our determination as to whether the STA should be extended, we need not require additional information from Chameleon concerning aspects of that STA operation. However, with respect to our specific question concerning the specific present location of the KFCC(AM) main studio, we note that absent limited exceptions, a licensee may not remove a station's


¹¹ We note that Chameleon's subsequent filing of an FCC Form 301 application seeking a construction permit to build permanent facilities at the Harris County Site and to change KFCC(AM)'s community of license to Missouri City, Texas does not provide an independent basis supporting extension of the subject STA.

¹² At one point Chameleon states that "[b]y Monday, May 1, 1995 the Rohn model 25 tower was in place." Response Letter at 10. Subsequently, Chameleon states that "working nonstop, the Chameleon crew had the tower in the air by 8:30 pm, Saturday May 6." Response Letter at 24.

main studio outside of the station's principal community contour without first securing the appropriate authorization. See 47 C.F.R. § 1125(b). Second, if a main studio is relocated pursuant to Sections 1125(b)(3)(i), (ii), proper notification must be made to the Commission. See 47 C.F.R. § 1125(b)(3)(iii). If Chameleon has relocated the KFCC(AM) main studio under either circumstance noted above, Chameleon must promptly file the required information in conformance with 47 C.F.R. § 11.25(b)(3)(iii).

Conclusion. The objection filed by Tom S. Whitehead IS GRANTED to the extent indicated herein. The objection filed by South Texas Broadcasting, Inc. IS DISMISSED. The August 4, 1995 request for extension of STA filed by Chameleon Radio Corporation IS DENIED. Pursuant to 47 C.F.R. § 73.1635(a)(5)(b),¹³ the May 5, 1995 STA -- as modified by the Commission's letter of May 12, 1995 -- IS CANCELLED. KFCC(AM) must immediately cease operation from the Harris County Site. Further operation from the Harris County Site will subject Chameleon to daily forfeitures calculated in accordance with Section 503(b) of the Act. Station KFCC(AM) must resume operations from its licensed site in Bay City, Texas.¹⁴

Sincerely,


Larry D. Eads, Chief
Audio Services Division
Mass Media Bureau

cc: James P. Riley, Esquire
Counsel for South Texas Broadcasting, Inc.
John Joseph McVeigh, Esquire
Counsel for Tom S. Whitehead
CIB Houston

¹³ Pursuant to 47 C.F.R. § 73.1635(a)(5)(b), the Commission may modify or cancel without prior notice or hearing any STA.

¹⁴ We also remind Chameleon that 47 C.F.R. § 73.1740(a)(4) provides that licensees must seek authority from the Commission to remain silent within ten (10) days of the discontinuance of operations. Such authorizations pertain only to an applicant's licensed site. Requests for silent authority pursuant to this Rule must be supported by a showing that factors beyond the licensee's control prevent the continuance of on-air service.



KFCC

1270 AM

Chameleon Radio Corporation

(713) 575-1270 Fax: (713) 564-8653

10865 Rockley Road Houston, TX 77099 P.O. Box 1235 Stafford, TX 77497

Houston's Unique Talk and International Language Station

September 22, 1995

Roy Stewart, Chief
Mass Media Bureau
Federal Communications Commission
1919 M St., N.W.
Washington, D.C. 20554

Re: FCC letter of September 8, 1995 (1800B3-KDY)

Mr. Stewart:

This letter is tendered in response to a letter dated September 8, 1995 from the office of Larry Eads, Chief, Audio Services Division. However, in light of Mr. Eads' resignation effective October 1, 1995, this letter is being directed to your office.

Chameleon Radio Corporation ("Chameleon"), licensee of KFCC (AM) Bay City, Texas, respectfully requests the Commission's forbearance and reconsideration of its September 8, 1995 decision to cancel Chameleon's special Temporary Authority to broadcast from the Harris County site.

Section 309(f) of the Communications Act states "extraordinary circumstances requiring temporary operations in the public interest..." are allowed. The action taken by Commission staff in canceling Chameleon's STA completely ignores the extraordinary circumstances faced by Chameleon and detailed in its previous communications on the matter. Quite literally, Chameleon was faced with only two options, cease to exist thereby depriving the nearly three dozen international language communities served by KFCC of their only broadcast outlet, or find another venue from which to continue broadcasting.

Federal Communications Commission	
Docket No. <u>96-173</u>	Exhibit No. <u>15</u>
Presented by <u>MMB</u>	
Disposition	Identified <u>X</u>
	Received <u>X</u>
	Rejected <u> </u>
Reporter <u>YS</u>	
Date <u>2-24-97</u>	



Under provisions of Section 309 of the act, the "extraordinary circumstance" faced by Chameleon must be acknowledged, but in its September 8th letter, Chameleon's situation was completely ignored as were the needs of the international communities it serves.

The cancellation of Chameleon's STA was subjective, arbitrary, and capricious for several reasons. First, dozens of STA applications were granted in recent years to broadcasters who constructed new transmitter sites closer to cities much larger than their city of license. However, this occurred when May Bradfield was in the position of determining which STA requests were granted. Policies regarding STA's changed dramatically when Ms. Bradfield was moved to another branch within the Commission and Mr. John Vu assumed Ms. Bradfield's responsibilities. Mr. Vu refused to authorize new tower construction even though he could not logically defend his position in the matter. It is clear, however, that a different bureaucrat produced different and quite arbitrary "rules."

The September 8th letter further states, "it is not our (the Commission's) policy to authorize new construction intended to be for permanent operations pursuant to STA. Again, we cite the common practice of allowing new antenna construction under Ms. Bradfield's guidelines and the contrasting prohibition now. As stated in the September 8th letter, this policy flies in the face of common sense. Instead, the policy should directly encourage such construction as long as the site is intended to be made the permanently licensed site. Only from such a site, or one licensed within three kilometers of it, can field strength readings be taken which are essential to establishing true ground conductivity from a new site thus allowing for the most efficient use of the spectrum.

Such construction also conserves the resources of the licensee since antenna construction can be made part of a permanent license later, thus saving additional construction expense, not to mention land acquisition, potential zoning problems, environmental damage, etc.

In addition to ignoring the needs of Houston's international community as well as Chameleon's extraordinary circumstances, Commission staff appears to imply in its September 8th letter that something was morally wrong Chameleon's STA operation. This is obvious from the last sentence in paragraph one of page five of the September 8th letter wherein the Commission dismisses the obligations and responsibilities of Chameleon to its programmers and instead complains that such a move deprives Bay City of a "licensed service it has *enjoyed* (emphasis added) for more than forty years." This advocacy of the old Bay City site is curious and remarkable in light of the fact that KFCC (formerly KIOX) had spent most of the last several years in a simulcast operation with its sister FM station and was considered "nothing but a liability" by its previous licensee and except for one weekend programmer was providing no local service to its city of license.

Cancellation of the STA at this point would destroy not only Chameleon's business enterprise, but also more than thirty other business entities; the programmers on KFCC.

Since commencement of operations from its STA site, KFCC has provided a service to communities that heretofore were completely unserved in one of the nation's largest metropolitan areas. All programmers on the station (Greek, Russian, Pakistani, Indian, etc.) support their programming efforts through the sale of commercial time and supply daily news, religious, and entertainment events to their respective communities. A blind cancellation of the STA fewer than 30 days prior to the cutoff date of Chameleon's currently pending 301 is completely illogical. It will destroy every one of these businesses.

Cancellation of the STA makes no sense from a technical standpoint either. The 300 watt STA operation of KFCC reduces rather than increases overlap to KWHI at Brenham, Texas. While a very minor amount of new overlap is created by the STA of KFCC, it is more than offset by the nearly 50% reduction in previously licensed overlap in other areas. In fact, as presently constituted, KFCC's STA complies with the spirit of MM Docket 87-267 in that first channel overlap which has been in place for more than 30 years is reduced by the nearly 50% as indicated above.

Cancellation of the STA also greatly jeopardizes the possibility that Chameleon would be able to construct permanent facilities sought in its currently pending application (BP-950804AC) which will eliminate virtually all the previously licensed overlap between the two stations.

In conclusion, KFCC's STA operation provides a needed service previously unavailable anywhere in southeast Texas. It is not merely another music or talk outlet but a unique vehicle for discriminating information to hundreds of thousands of legal immigrants from five different continents, and this is occurring on a radio station that previously had provided virtually no local service to its community.

Chameleon has shown good faith in proposing to make its site permanent and stands ready to construct the new facilities immediately upon approval of the Construction Permit sought in application BP-950804AC. The acceptance for filing and placement of the application on an October 6, 1995 cutoff clearly indicates the proposed facilities of KFCC meet the Commission's requirements and standards. Cancellation of the STA at this time, only weeks before cutoff is illogical, and counterproductive. It threatens the survival of Chameleon and its many programmers. Finally, the overall overlap situation with KWHI at Brenham, Texas is in fact, improved by KFCC's STA operation.

In light of the above, Chameleon respectfully requests the Commission's forbearance and reconsideration of its September 8th letter pending approval of its form 301 request to make the site permanent.

Respectfully submitted



Don Werlinger, President

cc: Honorable Ken Bentsen
U.S. House of Representatives

Honorable John Bryant
U.S. House of Representatives

Honorable Gene Green
U.S. House of Representatives

Honorable Ralph Hall
U.S. House of Representatives

Honorable Greg Laughlin
U.S. House of Representatives

Honorable Sheila Jackson-Lee
U.S. House of Representatives

Honorable Charlie Wilson
U.S. House of Representatives

KFCC Public Inspection File

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KFCC

1270 AM

Chameleon Radio Corporation

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Houston's Unique Talk and International Language Station

September 29, 1995

Roy Stewart, Chief
Mass Media Bureau
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Re: Chameleon Radio Corp., KFCC

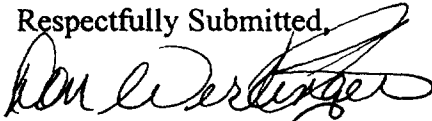
Mr. Stewart:

It has come to my attention that in conversations between several congressional aides and the office of James Burtles, Mr. Burtles has claimed Chameleon Radio Corporation ("Chameleon") violated Commission policy with regard to the "loss" of its Bay City, Texas transmitter site and the acquisition of its Southwest Harris County STA site. As the attached documents prove, the Bay City site was retained by the previous owner, Landrum Enterprises, Inc. ("Landrum"), as a condition of the purchase of KFCC (formerly KIOX). This arrangement was formalized through a lease back agreement that was signed simultaneous to closing on April 20, 1995. Again, we emphasize this lease back occurred as a condition of sale. On April 28, 1995, one week later, Chameleon entered into a lease/purchase agreement for the new site.

As has been clearly stated in previous correspondence and verbally in the May 25, 1995 meeting between Chameleon President Don Werlinger and then Audio Services Chief Larry Eads, it was never the intention of Chameleon to occupy the Bay City, Texas site because in fact, Landrum operates an FM station from the Bay City site. Landrum sold the AM to remove a business liability and intended to remain in the Bay City location. Therefore, upon closing on April 20, 1995, KFCC (then KIOX AM) immediately ceased operations from the Bay City location and did not return to the air until authorization and construction of the Harris County site was completed.

Chameleon continues to be surprised and disturbed by what it considers to be an unwarranted and wrong headed attack and demonization of a licensee whose only goal is to provide a meaningful broadcast service to a heretofore unserved minority segment of the southeast Texas population. Your immediate attention to this matter is appreciated.

Respectfully Submitted,

A handwritten signature in cursive script, appearing to read "Don Werlinger".

Don Werlinger, President

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the matter of)	MM DOCKET NO. 96-173
)	
CHAMELEON RADIO CORPORATION)	
)	
Licensee of Station KFCC(AM))	
Bay City, Texas)	
)	
Order to Show Cause Why the License)	
for Station KFCC(AM), Bay City, Texas)	
Should Not Be Revoked)	
)	

To: Chameleon Radio Corporation

MASS MEDIA BUREAU'S FIRST REQUEST
FOR ADMISSIONS OF FACT AND GENUINENESS OF DOCUMENTS

The Chief, Mass Media Bureau, pursuant to Section 1.246 of the Commission's Rules, hereby requests that, within 10 days from receipt of this request, Chameleon Radio Corporation ("Chameleon") admit to the truth of the following facts and genuineness of the documents, as set forth in the following numbered paragraphs. Each response should be labeled with the same number as the subject request for admission and should be made under oath or affirmation of the person providing the response. In addition, respondent is advised that Section 1.246 of the Rules provides that "[a] denial shall fairly meet the substance of the requested admission, and when good faith requires that a party deny only a part or a qualification of a matter of which a admission is requested, he shall specify so much of it as is true and deny only the remainder."

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<u>Federal Communications Commission</u>	
Docket No. <u>96-173</u>	Exhibit No. <u>17-A</u>
Presented by <u>MMB</u>	
Disposition	Identified <u>X</u>
	Received <u>X</u>
	Rejected _____
Reporter <u>YS</u>	

Admissions

1. Chameleon Broadcasting Corporation ("Chameleon") is the licensee of KFCC(AM), Bay City, Texas.
2. Don Werlinger is the President of Chameleon Broadcasting Corporation, licensee of KFCC(AM), Bay City, Texas.
3. Jo Nell Werlinger is the owner of KENR Management Company, Inc. ("KMC").
4. Don Werlinger is President of KMC.
5. On April 1, 1994, KMC entered into a Time Brokerage Agreement to provide programming on KENR(AM) in Houston, Texas.
6. On April 5, 1995, KMC became aware that the Time Brokerage Agreement with KENR(AM) would be terminated.
7. As a result of the termination of the KENR(AM) Time Brokerage Agreement, KMC stood to lose its Houston broadcast outlet.
8. Bay City is located approximately fifty miles southwest of Houston.
9. Chameleon filed a request with the Commission on April 21, 1995, for Special Temporary Authorization ("STA") to relocate the KFCC(AM) (then KIOX(AM)) transmitter site from a site in Bay City, Texas ("Bay City site") to a site located in rural southwest Harris County ("Harris County site").
10. Attachment A is a true and accurate copy of the STA request submitted by Chameleon to the Commission on April 21, 1995.
11. Don Werlinger, on behalf of Chameleon, signed the original of Attachment A.
12. The STA request states that "due to the loss of its currently licensed site, Chameleon

Radio Corporation ("Chameleon") licensee of KIOX . . . respectfully requests authority to operate from an alternate site utilizing Special Temporary Authorization ("STA")."

13. The alternate site proposed in the April 21, 1995, STA request was in Harris County.

14. KFCC(AM)'s primary signal contour operating from the Harris County site would not provide to Bay City, Texas, the 5 mV/m signal strength required for an AM broadcast station to serve its community of license.

15. Attachment B is a true and accurate copy of a Lease Agreement between Landrum Enterprises, Inc. ("Landrum") and Chameleon entered into on April 20, 1995.

16. Don Werlinger signed, on behalf of Chameleon, the original of Attachment B.

17. Chameleon stated that the authorized Bay City site was "lost".

18. Chameleon knew when it said that the Bay City site was "lost" that it was a voluntary loss.

19. Between April 21, 1995, and May 2, 1995, a telephone conversation took place between the Commission's staff and Don Werlinger regarding the status of Chameleon's STA request.

20. A member of the Commission's staff informed Mr. Werlinger during the telephone conversation that Commission policy precluded granting the April 21, 1995, STA request.

21. The Commission informed Don Werlinger that it would not grant an STA for an unbuilt tower.

22. The Commission informed Mr. Werlinger that it would not authorize the construction of permanent facilities through an STA.

23. Mr. Werlinger understood that the Commission would not grant the April 21, 1995, STA request as filed.

24. After being informed of the Commission's policy against issuing an STA for the construction of permanent facilities, Werlinger arranged for the construction of a tower at another site in Harris County.
25. Attachment C is a true and accurate copy of the amended STA filed with the Commission on May 2, 1995.
26. Don Werlinger, on behalf of Chameleon, signed the amended STA request on May 2, 1995.
27. The alternate site proposed in the amended STA request was also in Harris County.
28. KFCC(AM)'s primary signal contour operating from the Harris County site in the amended STA request would not provide the 5 mV/m signal strength to Bay City, Texas, required for an AM broadcast station to serve its community of license.
29. In its amended STA request, Chameleon stated that "the only changes we propose to make to the existing 180 foot tower is the installation of insulators and the folded unipole antenna."
30. The amended STA request included a map which also made reference to an existing 180 foot tower at the second Harris County site.
31. A constructed antenna existed at the second Harris County site at the time the amended STA was filed on May 2, 1995.
32. Antenna construction was completed at the Harris County site at the time the amended STA was filed on May 2, 1995.
33. All necessary Federal Aviation Administration (FAA) authorizations had been obtained for the Harris County tower at the time the amended STA was filed.

34. Werlinger arranged for the construction of new tower facilities at the Harris County site in order to comply with the Commission's STA policy.
35. Chameleon did not report to the Commission that it constructed the "existing" tower referenced in the May 2, 1995, STA amendment.
36. The "existing" tower referenced in the May 2, 1995, STA amendment was constructed to avoid a denial of the original STA request.
37. The Harris County tower was built by Joe McClish of Economy RF Construction Company in Austin, Texas.
38. There was no previous relationship between Don Werlinger and Joe McClish.
39. Don Werlinger contributed financially to the building of the tower at the second Harris County site.
40. Attachment D is a true and accurate Inquiry Letter sent by Larry Eads, Chief, Audio Services Division to Don Werlinger on July 25, 1995.
41. The Inquiry Letter requested specific details of how Chameleon lost the Bay City site.
42. The Inquiry Letter requested information as to when that "loss" occurred.
43. The Inquiry Letter requested details as to Chameleon's legal right of access to the authorized Bay City site.
44. The Inquiry Letter requested the status of the KFCC(AM) transmission facility at the Bay City site.
45. The Inquiry Letter inquired into any changes in the status of the KFCC(AM) transmission facility at the Bay City site.
46. On August 11, 1995, the Commission informed Chameleon that the STA had been